

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**JOSE SANTOS GAYTAN-LEAL,**

**Defendant.**

**CASE NO. 8:15CR120**

## TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant's objection to paragraph 41 (Filing No. 30). The government adopted the PSR (Filing No. 27). The Defendant has filed a Motion for Variance and a brief in support of the motion (Filing Nos. 29 and 31). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Accordingly,

IT IS ORDERED:

1. The Defendant's Objection to the Revised Presentence Investigation Report (Filing No. 30) will be addressed at the sentencing hearing to determine the number of criminal history points assessed to the Defendant;
2. The Court intends to adopt the PSR in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, these tentative findings are final;

5. The Defendant's Motion for Variance (Filing No. 29) will be heard at sentencing; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 9<sup>th</sup> day of September, 2015.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge